

FILED
IN COURT
ASHEVILLE, N.C.
JUN - 4 2014
U.S. DISTRICT COURT
W. DIST. OF N.C.

RULE 11 INQUIRY and ORDER OF ACCEPTANCE OF UNWRITTEN PLEA

The court is advised that you have decided to change your plea of not guilty to guilty. The court is required by the Federal Rules of Criminal Procedure to inquire and advise you concerning your plea. The court must ask you some questions and you will be required to personally respond to those questions under oath. I will now ask the Clerk to administer the oath to you.

1. Do you understand that you are now under oath and that you are required to give truthful answers to the questions that I am about to ask you?

YES: ☒

NO: _____

2. Do you understand that if you give false information under oath you may be prosecuted for perjury or false statements?

YES: ☒

NO: _____

3. Are you able to hear and understand my questions?

YES: ☒

NO:

4. Do you understand that you have the right to have a United States District Judge conduct this proceeding?

YES: ☒

NO:

5. Recognizing your right to proceed before a district judge, do you expressly consent to proceed in this court, that is, before a United States Magistrate Judge?

YES: X

NO:

6. a) There has been presented to me a document entitled "Sealed Addendum to Entry and Acceptance of Guilty Plea" which provides information to me concerning your name, age, education, use of drugs or alcohol and medical information. Did you provide the information for the completion of that document and did you sign that document?

YES: X

NO:

b) Is all the information provided in the document true and accurate?

YES: X

NO:

7. Is your mind clear and do you understand that you are here today to enter a guilty plea that may not later be withdrawn?

YES: X

NO:

8. Do you understand that you have the right to be represented by an attorney at every stage of this proceeding?

YES: X

NO:

Have you reviewed the bill of indictment with your attorney?

YES: X

NO:

9. Are you pleading guilty to counts one and two as contained in the bill of indictment?

YES: X

NO:

The law requires that I advise you of the essential elements of such an offense. Before I advise you of those elements, I am going to read to you the statute it is alleged that you have violated:

Count One:

18 USC § 2252A(a)(2)

Any person who knowingly receives, or distributes, any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; shall be punished as provided in subsection (b)

The Elements of the Offense are as Follows:

1. That you knowingly received or distributed child pornography as defined in Title 18, United States Code, Section 2256(8) as described in the bill of indictment;
2. That the materials and images described in the bill of indictment were received or distributed using any means or facility of interstate or foreign commerce or that has been mailed, shipped or transported in or affecting interstate or foreign commerce or which contain materials which have been mailed or so shipped or transported by any means, including by computer;
3. That the production of the visual depictions involved the use of a minor engaging in sexually explicit conduct and;
4. Such visual depiction was of such conduct; and
5. That you did all such acts knowingly, intentionally, willfully and unlawfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense or offense(s). Those maximum and minimum penalties are as follows:

The maximum possible penalty for such offense is a term of imprisonment of not less than 5 years' nor more than 20 years', a fine not to exceed the sum of \$250,000, or both, a term of supervised release of at least 5 years' and not more than life and a \$100 special assessment. However, if you had a prior conviction under this chapter, Section 1591, Chapter 71, Chapter 109 (A), Chapter 117 or

under Section 920 of Title 10 or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography or sex trafficking of children, then you would be sentenced to a term of imprisonment of not less than 15 years' nor more than 40 years', a fine not to exceed the sum of \$250,000, or both, a term of supervised release of at least 5 years' and not more than life and a \$100 special assessment.

Count Two:

18 U.S.C. § 2252A(a)(5)(B)

Any person who mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(5) either—

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, video tape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer shall be punished as provided in subsection(b).

The Elements of the Offense are as Follows:

1. That you knowingly possessed or accessed with intent to view, any book, magazine, periodical, film, video tape, computer disk, or other material as described in the bill of indictment;
2. That the materials as described in the bill of indictment which you possessed had been shipped or transported in interstate or foreign commerce or was produced using materials which had been so mailed, shipped or transported, including transmission by means of a computer;
3. That the books, magazines, periodicals, films, video tape, computer disk, or other materials described in the bill of indictment were produced of visual depictions involving the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct;

and

4. That you did all such acts knowingly, intentionally, willfully and unlawfully.

Penalty:

I am also required by law to advise you concerning the maximum and minimum penalties prescribed by law for such an offense or offense(s). Those maximum and minimum penalties are as follows:

The maximum possible penalty for such offense is a term of imprisonment of not more than 10 years', a fine not to exceed the sum of \$250,000, or both, a term of supervised release of not less than 5 years' nor more than life, and a \$100 special assessment. But if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained twelve years of age, such person shall be imprisoned for not more than 20 years', a fine not to exceed the sum of \$250,000, or both, a term of supervised release of not less than 5 years' nor more than life, and a \$100 special assessment.

However, if you had a prior conviction under this chapter, Chapter 71, Chapter 109 (A), Chapter 117 or under Section 920 of Title 10 or under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, then the maximum possibility penalty is a term of imprisonment of not less than 10 years' nor more than 20 years', a fine not to exceed the sum of \$250,000, or both, a term of supervised release for not less than 5 years nor more than life, and a \$100 special assessment.

10. Do you understand that if you are not a citizen of the United States, your guilty plea may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under Federal Law?

YES: X

NO:

11. a) Do you fully understand the charges against you, including the maximum and minimum penalties?

YES: X

NO:

- b) Do you understand each element of the offenses charged?

YES: X

NO:

- c) Do you understand that upon a plea of not guilty the government would be required to prove each element of the offenses charged beyond a reasonable doubt?

YES: X

NO:

- d) Do you understand that the government would be required to prove that the unlawful act(s) were committed knowingly, wilfully, intentionally, and unlawfully?

YES: X

NO:

12. If the court imposes an active term of imprisonment of more than one year, the court is required also to order a term of "supervised release," and a term of supervised release may be ordered in other circumstances. This means that after a defendant is released from prison, there are certain terms and conditions they will be required to follow. The length of supervised release usually ranges from one to five years, but may be more or less than that for certain offenses. Do you understand the terms "supervised release" as the court has explained it to you?

YES: X

NO:

13. Do you understand that if you violate the terms and conditions of supervised release, you could be returned to prison for an additional period of time?

YES: X

NO:

14. Do you understand that parole has been abolished in the federal system; and if you are sentenced to a term of imprisonment, you will not be released on parole?

YES: X

NO:

15. Have you and your attorney discussed how the Sentencing Guidelines may apply in your case?

YES: X

NO:

16. Do you understand how these Guidelines may apply to you?

YES: X

NO:

17. Do you understand that the Court is not bound by the Sentencing Guidelines but nevertheless must consult the Guidelines and take them into account when sentencing?

YES: X

NO:

18. Do you understand that the sentence the Court will impose will be within the statutory limits and in the Court's sound discretion and could be greater or less than the sentence as provided by the Guidelines?

YES: X

NO:

19. Do you understand that the Court will follow the procedural components of the Guidelines system, which means that the Probation Office will prepare a presentence report which contains Guidelines calculations and both you and the Government will have an opportunity to object to any alleged deficiencies in the report?

YES: X

NO:

20. Do you understand that in some circumstances you may receive a sentence that is different - that is, either higher or lower - than that called for by the Guidelines?

YES: X

NO:

21. Do you understand that if the sentence is more severe than you expect, you will still be bound by your plea and have no right to withdraw the plea of guilty?

YES: X

NO:

22. Do you understand that the court has the discretion, in appropriate circumstances, to order you to make restitution to any victim of the offense. The court may also, in the appropriate circumstance, require you to pay the costs of your confinement in prison or costs of supervision or special investigative costs, or all of these costs. The court may also require you to forfeit property involved in the offenses. Do you understand these requirements as I have explained them to you?

YES: X

NO:

23. Do you understand you have a right to plead not guilty, to have a speedy trial before a judge and jury, to summons witnesses to testify in your behalf, and to confront witnesses against you?

YES: X

NO:

24. Do you understand that if you exercise your right to trial you would be entitled to the assistance of an attorney, that you would not be required to testify, that you would be presumed innocent, and the burden would be on the Government to prove your guilt beyond a reasonable doubt. Do you understand all of these rights?

YES: X

NO:

25. Do you understand that by entering a plea of guilty, you forfeit and waive (or give up) your right to plead not guilty, to a trial by jury, and at that trial the right to assistance of counsel, the right to confront and cross-examine witnesses against you, and the right against compelled self-incrimination or any other rights associated with a jury trial? Do you understand that by entering this plea of guilty you are waiving (or giving up) all of these rights. A trial will not be held. If your plea of guilty is accepted, there will be one more hearing where the district court will determine what sentence to impose.

Do you understand all these things?

YES: X

NO:

26. Are you, in fact, guilty of counts one and two in the bill of indictment to which you have come to court today to plead guilty? That is, did you commit the acts described in counts one and two of the bill of indictment?

YES: X

NO:

27. a) Is your plea of guilty voluntary?

YES: X

NO:

- b) Has anyone made any promise to you or threatened you in any way to cause you to enter this plea of guilty against your wishes?

YES:

NO: X

- c) Do you enter this plea of guilty of your own free will, fully understanding what you are doing?

YES: X

NO:

28. Do you understand that entering a plea of guilty to a felony charge may deprive you, at least for a time, of certain civil rights such as the right to vote, hold a public office, serve on a jury and possess a firearm?

YES: X NO:

29. Is your willingness to plead guilty the result of prior discussions between your attorney and the attorney for the government?

YES: NO: X

30. Have the government and defendant entered a plea agreement of any kind or nature in this case?

YES: NO: X

31. Have you had ample time to discuss with your attorney any possible defenses you may have to this charge, and have you told your attorney everything you want such attorney to know about this case?

YES: X NO:

32. Are you entirely satisfied with the services of your attorney?

YES: X NO:


33. Are you telling the court that you know and understand fully what you are doing; that you heard and understood all parts of this proceeding; and want the court to accept your plea of guilty?

YES: X NO:

34. Do you have questions, statements, or comments to make about anything brought up or discussed in the course of the proceeding? If you do, I will be happy to try and answer your questions or I will be glad to hear any statements or comments that you want to make.

YES: NO: X

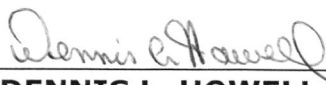
On advice and in the presence of counsel, the defendant respectfully requests the Magistrate Judge to accept his or her guilty plea. By signing below, the defendant (and counsel) certify and affirm that the answers given to the questions propounded by the court, as recorded above and on the record, are true and accurate to the best of their knowledge.


Defendant's Signature

Counsel's Signature

Based upon the representations and answers given by the defendant (and counsel) in the foregoing Rule 11 proceeding, the court finds that the defendant's plea is knowingly and voluntarily made; and that the defendant understands the charges, potential penalties, and consequences of said plea. The court further finds that defendant's plea is supported by an independent basis in fact containing each of the elements of the offense charged against the defendant in counts one and two of the bill of indictment. The defendant's plea is hereby accepted and the court adjudges he is now guilty of those offenses.

SO ORDERED, this the 4th day of June 2014.



DENNIS L. HOWELL
UNITED STATES MAGISTRATE JUDGE